APPEAL NO. 031707
FILED AUGUST 13, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 30, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) based on the total and permanent loss of use of both feet as of the date of the CCH. The claimant appealed, disputing the determination. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to both knees. The disputed issue is whether the claimant is entitled to LIBs based on the total and permanent loss of use of his feet as of the date of the CCH. *See* Sections 408.161(a)(2) and (b). In Texas Workers' Compensation Commission Appeal No. 010124, decided March 6, 2001, citing Travelers Ins. Co. v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962), we noted that the test for total loss of use is whether the member possesses any substantial utility as a member of the body or whether the condition of the injured member is such that it keeps the claimant from getting and keeping employment requiring the use of the member. In Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996, we noted that the Seabolt test is disjunctive and that a claimant need only satisfy one prong of the test in order to establish entitlement to LIBs. There was really no evidence that the claimant had lost the use of both feet at or above the ankle and the claimant testified that he could do almost anything but that it might cause him to be bedridden the following day. The hearing officer noted that the claimant admitted to being able to drive his truck, mow his lawn with a riding lawn mower, go grocery shopping, and run errands in town. The hearing officer additionally noted that the claimant was able to drive to the hearing alone and walk into the hearing without the assistance of any device. The hearing officer believed that if the claimant is capable of launching a boat and fishing two times a week, he could get and keep some kind of employment. The claimant emphasized the second condition of getting and keeping employment requires use of the legs.

The hearing officer did not err in determining that the claimant is not entitled to LIBs. The question of whether a claimant suffered a permanent and total loss of use of a member is generally a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer was not persuaded that the claimant sustained his burden of proving that he was

entitled to LIBs under either prong of Seabolt. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

DS
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Margaret L. Turner
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Edward Vilano
Appeals Judge